

1 UNITED STATES DISTRICT COURT
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3 EASTERN DISTRICT OF WASHINGTON
4

5 DOUG SEELY,
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7 Plaintiff,
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v.
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10 No. CV-09-0062-FVS
11

12 ORDER
13

14 "JOHN DOE" A JESUIT PRIEST, et
15 al.,
16

17 Defendants.
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19 **THIS MATTER** came before the Court on Defendants' motions to
20 sever and remand (Ct. Rec. 12 & 44) and motion to sever (Ct. Rec.
21 24). Plaintiff is represented by William A. Gilbert. Defendant
22 Oregon Province is represented by Renea I. Saade, Defendant Gonzaga
23 University is represented by James B. King, Defendant Wisconsin
24 Province is represented by William D. Hyslop and Laura J. Waldman,
25 Defendant Maryland Province is represented by Raymond F. Clary and
26 William F. Etter, and the remaining seven provinces, Chicago, New
Orleans, California, New York, Missouri, New England, and Detroit,
are represented by Gerald Kobluk and Gregory J. Arpin.

1 **BACKGROUND**
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3 On December 24, 2008, Plaintiff filed the instant action against
4 Defendants in the Spokane County Superior Court in the state of
5 Washington. Plaintiff alleges that an unidentified Jesuit Priest,
6 working at Gonzaga University in the capacity of priest and
7 counselor, sexually molested him in Spokane, Washington, between 1970
8 and 1972.
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1 and 1975. In addition to naming "John Doe," a Jesuit Priest, and
 2 Gonzaga University as defendants in his Complaint, Plaintiff
 3 specifically named the Oregon Province as a defendant. However, with
 4 respect to the other nine Provinces, Plaintiff merely named a generic
 5 "Home Province(s)" to refer to one or more of the Jesuit Provinces
 6 from around the country.¹

7 On March 4, 2009, Defendant Oregon Province filed and served a
 8 Notice of Removal, removing the matter to this Court. (Ct. Rec. 1).
 9 On March 6, 2009, Defendant Oregon Province filed a Notice of Filing
 10 of Motion to Transfer Case to District of Oregon, indicating it had
 11 filed a motion in federal district court in Oregon, asking that this
 12 case, and all other pending sex abuse cases where the Oregon Province
 13 is a named defendant, be transferred to Oregon federal court to
 14 become part of the Oregon Province's pending bankruptcy. The motion
 15 to transfer this action is noted for a hearing before Elizabeth L.
 16 Perris, United States Bankruptcy Judge for the District of Oregon, on
 17 April 30, 2009. (Ct. Rec. 66, Exh. B).

18 On March 13, 2009, Defendant Gonzaga University filed a motion
 19 to sever the claims asserted by Plaintiff against it and remand the
 20 matter to Spokane County Superior Court. (Ct. Rec. 12). Defendant
 21 Maryland Province has indicated that it joins in Defendant Gonzaga
 22 University's motion to sever and remand. In addition, on March 17,
 23

24 ¹In the United States, the Society of Jesus (Jesuits) is
 25 organized into 10 geographic regions, called Provinces. The
 26 Provinces are as follows: California, Oregon, Maryland, New
 Orleans, Wisconsin, Chicago, Missouri, New York, Detroit and New
 England.

1 2009, Defendant Maryland Province submitted a separate motion to
2 sever Plaintiff's claims against it and remand the matter to Spokane
3 County Superior Court. (Ct. Rec. 44).

4 On March 16, 2009, Defendant Wisconsin Province filed a motion
5 to sever Plaintiff's claims against it to allow for the litigation of
6 those claims to go forward in this Court. (Ct. Rec. 24). On March
7 17, 2009, the remaining seven provinces filed a notice of joinder in
8 Defendant Wisconsin Province's motion to sever. (Ct. Rec. 30).

9 The motions to sever and remand (Ct. Rec. 12 & 44) and motion to
10 sever (Ct. Rec. 24) are now before the Court.

11 **DISCUSSION**

12 Defendant Gonzaga University and Defendant Maryland Province
13 have moved this Court for an order severing the claims asserted by
14 Plaintiff against them and remanding those claims to Spokane County
15 Superior Court. (Ct. Rec. 12 & 44). Defendant Wisconsin Province
16 filed a motion to sever Plaintiff's claims against it to allow for
17 the litigation of those claims to go forward in this Court. (Ct.
18 Rec. 24). The remaining seven defendant provinces join in Defendant
19 Wisconsin Province's severance motion.

20 Defendant Gonzaga University contends that this Court lacks
21 subject matter jurisdiction ("related to" jurisdiction) over
22 Plaintiff's claims against Gonzaga University, and, notwithstanding
23 the absence of subject matter jurisdiction, equitable considerations
24 support remand of the claims against Defendant Gonzaga University to
25 the Spokane County Superior Court. (Ct. Rec. 13). Defendant
26 Maryland Province also asserts an absence of subject matter

jurisdiction but focuses its argument on the lack of unanimity for the removal. (Ct. Rec. 45). Defendant Wisconsin Province argues that the Court should order the severance of claims, pursuant to Fed. R. Civ. P. 21, in order to prevent prejudice and promote convenient and efficient administration of Plaintiff's claims. (Ct. Rec. 25).

On March 31, 2009, Defendant Oregon Province filed a timely response in opposition to the aforementioned motions. (Ct. Rec. 65). Defendant Oregon Province asserts that its codefendants, by attempting to have their severance motions decided prior to the pending motion to transfer, are attempting to deprive the District of Oregon Bankruptcy Court of the ability to assess for itself the importance of retaining jurisdiction over the claims. (Ct. Rec. 65 at 16). Defendant Oregon Province requests that this Court withhold from ruling or stay consideration of these motions pending the District of Oregon's decision on the pending motion to transfer. (Ct. Rec. 65 at 2). Defendant Oregon Province asserts that this will avoid the possibility of inconsistent rulings, further judicial economy and give due comity and deference to a sister court. *Id.* Defendant Oregon Province contends that the District of Oregon Bankruptcy Court is in the best position to decide what impact severing the claims would have on the Bankruptcy Proceeding.

Defendant Gonzaga University submitted a reply arguing that since the district court lacks subject matter jurisdiction, it has a duty to immediately remand the action. (Ct. Rec. 67). Defendant Gonzaga University contends that the administration of the bankruptcy should not be used to bootstrap subject matter jurisdiction over

1 Plaintiff's claims against Defendant Gonzaga University and the other
2 non-debtor provinces.

3 Defendant Maryland Province also filed a reply memorandum. (Ct.
4 Rec. 69). Defendant Maryland Province also argues that the Court
5 should sever and remand the matter because subject matter
6 jurisdiction is lacking. Defendant Maryland Province asserts that if
7 it appears that the district court lacks subject matter jurisdiction
8 at any time, the Court is "required" to remand the matter.

9 The seven defendant provinces additionally submitted a reply.
10 (Ct. Rec. 68). These defendants assert that it is clear that
11 Plaintiff's complaint applies to only one province and Plaintiff has
12 not asserted joint conduct between the various provinces. The seven
13 defendant provinces thus argue that, contrary to Defendant Oregon
14 Province's position, the adjudication of whether one province is
15 directly negligent has no bearing on whether other provinces breached
16 their own duties.

17 Defendant Wisconsin Province also submitted a reply brief. (Ct.
18 Rec. 70). Defendant Wisconsin Province contends that efficient
19 administration of Plaintiff's claims favors the severance of all
20 claims from those against Defendant Oregon Province, which are
21 subject to transfer to the bankruptcy court. Defendant Wisconsin
22 Province argues that severance of Plaintiff's claims against
23 Defendant Oregon Province's codefendants would not have a significant
24 impact on the bankruptcy action.

25 While it is possible that Defendants' jurisdiction and other
26 severance arguments may have merit, the Court finds that these issues

1 should be entrusted to the sound discretion of the bankruptcy judge.
2 In order to give due comity and deference to the Court in the
3 District of Oregon, the undersigned defers ruling on Defendants'
4 severance motions (Ct. Rec. 12, 24 & 44) as well as the pending
5 motion to dismiss (Ct. Rec. 32), until such time that the pending
6 motion to transfer has been addressed by the District of Oregon.

7 Accordingly, **IT IS HEREBY ORDERED as follows:**

8 1. The Court reserves ruling on all pending motions in this
9 Court (Ct. Rec. 12, 24, 32 & 44) until after the pending motion to
10 transfer has been addressed by the District of Oregon.

11 2. The May 12, 2009, hearing date on the pending motion to
12 dismiss (Ct. Rec. 32) is **VACATED**.

13 3. The parties shall keep this Court apprised of the
14 proceedings in the District of Oregon, and, based upon what
15 transpires in the District of Oregon, Defendants may re-notice their
16 motions, if necessary, or shall withdraw these motions.

17 **IT IS SO ORDERED.** The District Court Executive is hereby
18 directed to enter this order and furnish copies to counsel.

19 **DATED** this 13th day of April, 2009.

20 _____
21 S/Fred Van Sickle
22 Fred Van Sickle
23 Senior United States District Judge
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